

Service Date: November 3, 1999

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of Victor I. Pizzola dba)	
Valley Taxi, Hamilton, Montana, Application)	DOCKET NO. T-98.32.PCN
For a Montana Intrastate Certificate of)	ORDER NO. 6469
Public Convenience and Necessity)	

FINAL ORDER
APPEARANCES

FOR THE APPLICANT:

Victor I. Pizzola, dba Valley Taxi, 362 Rummel Lane, Hamilton, Montana, 59840.

FOR THE PROTESTANT:

Edward Janecek III, Christian, Samson & Jones P.C., 310 West Spruce, PO BOX 8479,
Missoula, Montana 59807, representing Paul Sultzbach, dba Mission Valley Medicab.

BEFORE:

DAVE FISHER, CHAIRMAN
BOB ANDERSON, COMMISSIONER
BOB ROWE, COMMISSIONER

COMMISSION STAFF:

Denise Peterson, Staff Attorney, and Nickie Eck, Compliance Specialist, Transportation
Division, 1701 Prospect Avenue, PO BOX 202601, Helena, Montana 59620-2601.

BACKGROUND

1. Victor Pizzola, doing business as Valley Taxi, filed an application on September 25, 1998 with the Montana Public Service Commission (Commission) for a Class B authority to transport medical and psychiatric patients to and from all points and places in Ravalli, Missoula, Mineral, Powell and Lewis and Clark counties in private pay and/or under contract for the State of Montana, Medicaid, Veterans Administration or others. Supporting the application was a single affidavit from a customer of Valley Taxi who was on SSI and SSDI and Medicaid. This customer stated that Valley Taxi had transported him to and from his doctor's appointments in Missoula. When he was dropped off in Missoula, if he had another appointment Valley Taxi

could not pick him up and drop him off in and around Missoula.

2. The Commission duly issued and published a notice of the application, based on Valley Taxi's amended wording, for "non-emergency transportation of medical and psychiatric patients" for the counties as initially proposed.

3. On October 22, 1998, Paul Sultzbach, dba Mission Valley Medicab, operating under PSC No. 9199 (Sub B), filed a protest to the Application of Valley Taxi, and requested a public hearing.

4. On November 8, 1998, Valley Taxi filed a request to dismiss the protest and deny the hearing requested by Mission Valley Medicab (Medicab), on the grounds that the request was overly broad. Mr. Pizzola maintained that Medicab could not provide all the service requested in the application.

5. On November 16, 1998, Mission Valley Medicab formally responded to Valley Taxi's request for dismissing the hearing, stating that Medicab's protest involved geographic areas fully served by Medicab. Further, Medicab's objection concerned the fitness of Valley Taxi, based on complaints about Valley Taxi's service and performance in the areas it was already authorized to serve.

6. At its regularly scheduled business meeting on November 24, 1998, the Commission denied the motion of Valley Taxi to remove the protest of Medicab.

7. On December 10, 1998, the Commission scheduled and published notice of a public hearing to be conducted in Missoula, Montana, on January 14, 1999.

8. In November 1998 Valley Taxi issued 10 general interrogatories to Medicab; in December 1998 it issued 22 more specific interrogatories. Medicab filed its responses to the initial 10 interrogatories on December 21, 1998, objecting to all 10 interrogatories to which Medicab responded. On January 8, 1999, Medicab filed "responses" to each of the second set of 22 interrogatories, objecting to the entirety of the second set of requests as exceeding the number allowed by Rule 33, M.R.Civ.P.

9. On January 11, 1999, Valley Taxi submitted a request for a subpoena and a motion to compel, or alternatively a motion to dismiss or to continue the hearing. Mr. Pizzola moved the Commission to compel Medicab to answer both sets of interrogatories. In addition, he wanted the Commission to assure the presence of an essential "hostile" witness, Mrs. Sultzbach, but had learned that she would be unable to attend because she was having surgery. Therefore, he asked

the Commission to continue the hearing to a time when she would be able to appear.

10. On January 12, 1999, Medicab filed a Motion to Continue the Public Hearing. Mrs. Sultzbach had hip surgery on January 11th. Because she might be able provide relevant testimony, as requested by Valley Taxi, Medicab asked that the hearing be postponed at least 5 weeks, in which time Medicab would also be able to comply with the discovery requests.

11. Based on the two requests, the Commission vacated the hearing date scheduled for January 14, 1999.

12. On January 22, 1999, Wayne Budt, Administrator of the Transportation Division, sent a letter to Mr. Pizzola, memorializing their telephone conversation of January 12, 1999, in which Mr. Pizzola stated that he agreed to and would submit a waiver of the 180 day requirement for a Final Order. Mr. Budt again corresponded with Mr. Pizzola on May 5, 1999, requesting whether Mr. Pizzola wished to proceed.

13. On July 16, 1999, the Commission issued and published the Notice of Public Hearing, rescheduling the hearing for August 26, 1999 in Missoula.

14. The Commission received a letter dated August 23, 1999 from counsel for Mission Valley Medicab setting forth the terms of what he understood was the informal resolution with Valley Taxi, subject to confirmation from Mr. Pizzola. The terms of the agreement would limit the authority granted as follows: "All transports in Missoula County shall originate and terminate outside of Missoula County." The limitation would allow Valley Taxi to pick up a non-emergency patient in Ravalli County for transportation to an appointment in Missoula County, and to provide other related transportation in Missoula, so long as the trip terminated in Ravalli County.

15. On August 25, 1999, the Commission received a written request from Valley Taxi to bring official records to the hearing related to "Alberton Family Medical Clinic(s) (A.F.M.C.) full and complete application" for authority and the final order granting this authority, which he believed was for Granite County. Mr. Pizzola expressed the intent to "reuse" the application to demonstrate "public need and necessity" in support for his own application. Likewise, he requested that the Commission bring the official records of the application of Ravalli County Council on Aging for Class B authority (Docket No. T-99.1.PCN), including Mr. Pizzola's testimony, to demonstrate the need for Valley Taxi's request in the present application.

16. A quorum of the Commission conducted a public hearing on August 26, 1999 in the

Missoula City Council Chambers, 435 Ryman Street, Missoula, Montana. Mission Valley Medicab was represented by counsel, and Mr. Pizzola appeared on his own behalf.

SUMMARY OF HEARING

17. At the hearing on August 26, 1999, Mission Valley Medicab presented a proposed Stipulation that Mission Valley Medicab would not object to a grant to Valley Taxi of the authority, if all trips originate or terminate in Ravalli. Mission Valley Medicab consented to an authority allowing Valley Taxi to take non-emergency medical and psychiatric patients as passengers from one health care provider to another within Missoula as part of a transportation originating or terminating in Ravalli County. Mr. Pizzola agreed with the terms of the proposed Stipulation.

18. Mr. Sultzbach, testifying for Medicab, explained that he had no objection to a grant of authority to the other counties in the application. Although Medicab could provide the service and was available to do so under the authority in Granite and Powell counties, Mr. Sultzbach testified that there was virtually no need and hence no income from those counties. Mr. Pizzola requested to withdraw his application for authority in Granite and Powell counties.

19. Mr. Pizzola proceeded to testify on his interest in providing service to Lewis and Clark County. He noted that there were no protests from Lewis and Clark County. He testified that he had an urgent need to make more income. Mr. Pizzola was concerned about the stipulated outcome of the authority granted to the Ravalli County Council on Aging after the previous hearing in Hamilton. (Docket No. T-99.1.PCN, Order No. 6461, issued April 12, 1999.) As a result of Mr. Pizzola's generous agreement to stipulate, the Council will take 50 percent of his income, much of which comes from state contracts, according to his testimony. Competition from the Council will force him to put taxicabs in Stevensville and Darby.

20. Mr. Pizzola testified that Lewis and Clark County would be a potentially large source of income. He would like to be able to do state contracts in Lewis and Clark County. If the Commission would not grant a permanent authority, Mr. Pizzola requested a temporary authority to see what he could do in Lewis and Clark County. If granted the authority, he would set up a person and a vehicle in Helena. He would set up someone in an apartment with a telephone and fax, and service to be dispatched out of Lewis and Clark. It would be a separate operation from that in Ravalli County. Mr. Pizzola maintained that as a qualified state of Montana Medicaid contractor, he would have contracts as soon as the Commission permitted him. He had put a lot

of time and thought into this request. The cost of operation would be about 25 percent of his cost in the current operation where he serves the general public. The profit would help his existing business. He would expect five jobs a day. He gets requests from Veterans to go from Ravalli County to Helena, and he does take people to the bus depot to go to the Veteran's hospital in Helena.

21. Under examination from the Commission, Mr. Pizzola admitted that he had not contacted anyone in Lewis and Clark County to determine the need for this authority. Under his present authorities, including the regular taxi authority, he testified that he transports 50 people a week from Ravalli County to Missoula County. He has three vans, and two can go on the road at a time. His five drivers are independent contractors, and not employees, according to his testimony. Valley Taxi has 24-hour radio dispatch. He provided as many as 50 to 60 Missoula trips when he had a forest service contract. Under his regular taxi authority he does airport runs, plus extra, for a total of 25.

FINDINGS OF FACT AND DISCUSSION

22. The Commission finds that the parties entered into a reasonable stipulation to the limitation to allow Valley Taxi to transport non-emergency medical and psychiatric patients to various appointments in Missoula County as part of a continuous transportation, limited to transportation originating or terminating in Ravalli County. The Commission will grant this request.

23. The Commission finds that it is reasonable to allow Mr. Pizzola to withdraw his application for the requested authority in Granite and Powell counties, since there is no demonstrated need for this service. The Commission will grant this request.

24. The Commission finds that there was no support for the service requested for Lewis and Clark County to transport non-emergency medical or psychiatric patients. Valley Taxi presented no support in the application and produced no witnesses at the public hearing to attest to a need for service in and to Lewis and Clark County. The Commission cannot grant an authority based on the need for an applicant to generate more income, without a demonstration that there is a need for the authority. The Commission must deny the request to provide service for Lewis and Clark County.

CONCLUSIONS OF LAW

1. The Montana Public Service Commission properly exercises jurisdiction over the

parties and matters in this proceeding pursuant to Title 69, Chapter 12, Montana Code Annotated (MCA).

2. The Commission has provided adequate notice and opportunity to be heard to all interested parties in this matter pursuant to the Montana Administrative Procedures Act (MAPA) requirements for contested case procedures. §§ 2-4-601, et seq., MCA.

3. An applicant for a certificate of Class B operating authority must show that the public convenience and necessity require the proposed service. § 69-12-323, MCA.

ORDER

NOW THEREFORE THE COMMISSION ORDERS THE FOLLOWING:

The Commission grants the request to withdraw the application for Class B authority for Granite and Powell counties. The Commission denies the request for Class B authority to transport non-emergency medical or psychiatric patients to, from or within Lewis and Clark County.

The Commission grants the following authority, as stipulated:

Class B – Non-emergency medical and psychiatric patients between all points and places in Ravalli and Missoula counties, Montana for medical appointments.

LIMITATION: (1) All transportation must originate or terminate in Ravalli County. (2) Operations within Missoula County are limited to those from one medical appointment or provider to another medical appointment or provider as part of a movement originating or terminating in Ravalli County.

Done and dated this 2nd day of November, 1999.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

BOB ANDERSON, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.